

8.10.00.00 - CONSTRUCTION OBLIGATIONS

8.10.01.00 General

Construction contract obligations require the State to do certain work on grantor's remaining property to avoid payment of damages. This work can range from construction of fences and irrigation facilities to replacement of structures. As such, the conditions must be completely described in the Contract and discussed in the Memorandum of Settlement (MOS). Project Development and Construction must be notified in writing of these obligations. Appropriate entry clauses must be included in the Contract.

8.10.02.00 State Performed Work

The following clause shall, in all cases, be the last paragraph of any clause in a Contract where the State will move, relocate, or reconstruct buildings or fences, pipelines, cattle passes, etc.:

"All work done under this agreement shall conform to all applicable building, fire and sanitary laws, ordinances, and regulations relating to such work, and shall be done in a good and workmanlike manner. All structures, improvements or other facilities, when removed, and relocated, or reconstructed by the State, shall be left in as good condition as found"

8.10.03.00 Permission to Enter Grantor's Land for Construction Purposes

When it is necessary to enter onto owner's remainder property to perform construction contract work on facilities for owner's use, the following clause will be included in the Contract. This clause can be used with appropriate modification to allow entry for more than one type of construction work. It is not necessary to repeat the clause for each and every entry requirement.

"Permission is hereby granted to State or its authorized agent to enter on my/our land, where necessary, to (relocate or reconstruct road approaches, cattle guards, trails, pipes, culverts, etc.), as shown on the attached map(s) and as described in Clause(s) ____ of this Contract.

I (we) understand and agree that after completion of the work described in Clause(s) _____, said facility(ies) will be considered as

my/our sole property and I (we) will be responsible for its/their maintenance and repair."

8.10.04.00 Road Approach Within State Highway Right of Way

When it is necessary to perpetuate existing private roadways which lie partially or entirely within highway right of way, the following clause will be included in the Contract:

"At no expense to the grantor(s) and at the time of highway construction, construct road approach(es) _____ of Engineer's Station(s) _____, Department of Transportation Survey between _____ and _____. Upon completion of construction of said road approach(es) it/they will be considered as an encroachment under permit on the State highway and is/are to be maintained, repaired and operated as such by grantor(s) in accordance with and subject to the laws of the State of California and the rules and regulations of the Department of Transportation of said State."

Since the Permit Section must be aware of all encroachments within the highway right of way, a copy of the Contract shall be forwarded to the District Permit Section. They may feel it necessary to issue a Standard Encroachment Permit in lieu of using the Contract as the permit. If so, the agent should assist the Permit Section in obtaining any necessary signatures, however, the permit should be issued without charging any fees.

This same clause should be used where pipelines or conduits are being installed within the highway right of way as encroachments. The clause would have to be revised to suit this type of installation. Again, a copy of the contract should be provided the Permit Section.

8.10.05.00 Property Monuments

The following clause may be used only where existing property line monuments are in place, and the property owner insists that State replace the property monuments. Right of Way must advise Construction in sufficient time, of the State's obligation to set new monuments, so the necessary work will be done before old monuments are destroyed by highway construction.

"State will set new property line monuments or stakes marking the intersection of the new right of way line with the grantor's property lines as said property lines are determined by existing property line monuments or stakes; however, State assumes no responsibility as to the new property line monuments or stakes, other than their location with reference to the old ones."

8.10.06.00 Divided Highway Crossovers

No obligation is to be assumed in any Contract or Judgment to install crossovers in a median strip. Any such obligation would be contrary to highway design and safety standards.

8.10.07.00 Fruit Trees Within the Right of Way

Because of potential problems involving disease or insect infestation, the Department should not maintain fruit bearing trees as such within the right of way. Where conditions justify, this procedure may be modified to allow trees to remain solely for shade or ornamental purposes. This may involve removing extra trees so that spacing will conform to highway standards. The maintenance forces will be responsible for necessary spraying and care of the trees.

When right of way is being acquired through orchard land in anticipation of future construction, the Contract may provide for the owner to retain the responsibility for the care of the trees, including harvesting, pest control, proper cultivation, pruning, etc., pending highway construction (see Section 8.09.08.00). If the grantor is not desirous of retaining this obligation, the District should immediately arrange for removal of the trees as soon as feasible after close of escrow.

8.10.08.00 Fencing-Access Control

The Project Development Procedures Manual classifies fencing either as "freeway" or "property" depending on whether the fence is used for access control or to serve the abutting property owner's needs. Freeway fences are placed within the right of way to act as physical barriers to enforce access control. Property fences are privately owned and maintained to serve the abutting property owner's needs. Although they are the property of the owner, certain types of fences may satisfy access control requirements.

No condition shall be included in the Contract which would limit State's right to construct access control fences or barriers within the right of way of any access controlled highway.

8.10.09.00 Installation of Property Fence

Where it is the State's obligation to either build or relocate a property fence, a clause must be in the contract patterned after the following:

The State shall:

"Install 813 mm wire mesh and three lines of barbed wire fastened to metal posts spaced at ____ meter intervals or spacing to conform to standard specifications for this project along and immediately adjacent to the State highway right of way line, but on the undersigned grantor's remaining property, and extending from (left or right of) Engineer's Station ____ to Engineer's Station ____.

8.10.10.00 Payment in Lieu of Construction Obligation Covering Fencing

If grantor insists on payment to perform fence installation, the Contract must expressly provide that grantor has received payment in full to do the work and that the State is released from any obligation in regard to fencing. The following clause is to be used:

"It is agreed that included in the amount payable under Clause 2(A) above is payment in full to compensate grantor for the expense of installing fencing between (left or right of) Engineer's Station ____ and Engineer's Station _____. The grantor releases the State from any obligation to construct said fencing."

In some instances it will be appropriate to withhold funds to ensure construction of the fencing.

8.10.11.00 Construction of Sidewalks

Under no circumstances shall any obligation be assumed to construct or pay for sidewalks except as a replacement or as an offset against other consideration owed to the grantor. Where frontage roads are to be connected to local streets that would otherwise dead-end at the freeway, and where such intersecting streets have sidewalks, it will be in order to construct sidewalks along the frontage roads. Such sidewalks are considered to be a replacement of

existing facilities and, as such, are not right of way obligations.

8.10.12.00 **Approval of Change Orders**

The Construction Department will submit to the DDC-R/W, for approval, all change orders covering the performance of work which is in fulfillment of a

right of way obligation. It shall be the responsibility of the DDC-R/W to investigate and determine if the work proposed in the change order is proper.

If the work proposed by the change order is a right of way obligation, the DDC-R/W will note approval on the yellow copy of the change order. In the event the work involves a right of way obligation not covered by a Right of Way Contract, then a letter of explanation shall be prepared by the DDC-R/W and submitted to Office of Construction Engineer along with the change order.

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